

COOK COUNTY SHERIFF'S MERIT BOARD

SHERIFF OF COOK COUNTY,

vs.

CORRECTIONAL OFFICER,  
JOHN D. BAILEY,  
Employee # [REDACTED]  
Star #7030.

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) Docket # 1811  
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**DECISION**

THIS MATTER COMING ON to be heard pursuant to notice before Jennifer E. Bae, a Board Member, and the Cook County Sheriff's Merit Board finds as follows:

**Jurisdiction:**

1. John D. Bailey holds a position as a Correctional Officer which involves duties and responsibilities to the public.
2. Each member of the Cook County Sheriff's Merit Board (hereinafter "Board") has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term.
3. The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes.
4. The Respondent was personally served with a copy of the Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the complaint.
5. The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting documents.

**Background:**

By complaint dated March 13, 2015, Sheriff Thomas J. Dart, sought to remove Respondent from the Cook County Sheriff's Office. The complaint alleges that Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Office, and Rules and Regulations of the Cook County Merit Board when:

-Respondent used excessive force against detainee [REDACTED] by striking detainee [REDACTED] in the head from behind causing detainee [REDACTED] to hit a door/wall causing injuries while detainee [REDACTED] was handcuffed and walking in front of Respondent;

-Respondent failed to document in the Use of Force Report and Inmate Disciplinary Report that he struck detainee [REDACTED] in the head from behind causing detainee [REDACTED] to hit a door/wall causing injuries while detainee [REDACTED] was handcuffed and walking in front of Respondent;

-Respondent falsely reported to investigators from the OPR that as he and detainee [REDACTED] were entering the hallway detainee [REDACTED] attempted to spit on him;

-Respondent failed to maintain a professional demeanor while on duty and Respondent's conduct throughout the incident with detainee [REDACTED] was unbecoming of an officer of the CCSO; specifically:

**SHERIFF'S ORDER 11.2.1.0** (effective September 19, 2011)

**RESPONSE TO RESISTANCE/USE OF FORCE POLICY**, in its entirety, including but not limited to, the following subparts:

II. Policy

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. Definitions

E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

VII. Guidelines

B. Officers are authorized to use only the amount of force necessary to effect lawful objectives. The determination of what is or is not reasonable force

is based on each individual situation and is a decision that the involved officer must make based on the totality of the circumstances.

- C. Except under exigent circumstances, officers must identify themselves and give verbal warnings to any subject prior to using any force. Officers, whenever possible, shall exercise advice, persuasion, verbal commands and warnings prior to the consideration of force. This may include the utilization of any previous crisis intervention training the officer may possess or the presence of a mental health provider if possible. When possible, verbal commands are to be used in conjunction with the officer's actions.
- E. When force is applied, officers shall escalate or de-escalate their use of force based on the subject's resistance.

#### X. PROHIBITED/RESTRICTED ACTS

The use of excessive force is prohibited. Officers using excessive force, unwarranted physical force, or verbal abuse shall be subject to disciplinary action up to and including termination of employment.

##### A. The following acts are prohibited:

- 4. use of force as a response to verbal insults or subject threats where there is no immediate threat to safety of the institution, subjects, or staff;
- 5. use of force as punishment or retaliation;
- 6. striking, hitting, or punching a restrained or handcuffed and non-combative subject; and
- 7. use of force against a subject after the subject has ceased to offer resistance and is under control.

#### XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.
- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the content of this order and to adhere to the policy established herein.

**GENERAL ORDER 24.9.1.0** (effective July 11, 2011)

**REPORTING INCIDENTS**, in its entirety, including but not limited to, the following subparts:

## II. Policy

It is the policy of the CCDOC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any other situation that creates a dangerous workplace, are reported and documented in timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person. Reports shall be made verbally and in writing as directed by this order.

## VII. Procedures

### A. Notification

1. All reportable incidents occurring within CCDOC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current CCSO Response to Resistance/Use of Force Policy.

### B. -

- C. Any employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.

### F. General Reporting Guidelines

2. Complete and accurate documentation of events and incidents within CCDOC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problem areas within the facilities. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

## VIII. Applicability

This General Order is applicable to all employees of the Cook County Department of Corrections. All employees shall familiarize themselves with the contents of this order. All supervisors will review the contents of this order with all employees under their supervision as appropriate, and ensure the provisions as outlined are strictly adhered to. This order is for strict compliance.



## **GENERAL ORDER 4.1**

**INTERNAL INVESTIGATIONS**, in its entirety, including but not limited to, the following subparts:

### **III. Requirements**

Misconduct which impairs an employee's ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County may be cause for disciplinary action

Serious misconduct would include those violations of the law which constitutes a misdemeanor or a felony or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of staff or inmates or the security of the institution. Included also is misconduct committed while an employee is off duty/outside the institution where in the official character and status of the employee as a correctional officer, deputy sheriff, law enforcement officer, or civilian correctional employee becomes identifiable and calls into question the reputation of the County of Cook, the Office of the Sheriff, or the Department of Corrections.

#### **A. Guidelines for SERIOUS MISCONDUCT include, but are not limited to:**

17. Engage in any conduct unbecoming an employee of the Cook County Department of Corrections which tends to reflect discredit on the Department of Corrections or Sheriff's Office.

18. Making a false official report, either oral or written.

## **GENERAL ORDER 3.8**

**ETHICS AND STANDARE OF CONDUCT**, in its entirety, including but not limited to, the following subparts:

### **I. POLICY**

It is the policy of the Cook County Department of Corrections (CCDOC) that employees will conduct themselves in a professional and ethical manner, both on and off duty. Employees will not engage in activities unbecoming of county employees, or conduct that reflects unfavorably to the Office of the Sheriff of Cook County.

### **II. —**

### **III. REQUIREMENTS**

The CCDOC Code of Ethics requires the highest level of conduct from all employees. It is the expectation that sworn and civilian employees conduct themselves with high standards of professional conduct and behavior. Employees that fall [sic] to maintain high standards of conduct and ethics will be subject to corrective or disciplinary action, and may include recommendation for termination.

A. Compliance with Laws and Regulations

4. Employees will comply with lawful departmental rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

D. Professional Conduct

2. Detainees will not be subject to sexual, emotional, verbal or physical abuse or the use of unnecessary levels of force.

**SHERIFF'S ORDER 11.2.20.0** (effective January 25, 2013)

**RULES OF CONDUCT**, in its entirety, including but not limited to, the following subparts:

II. Policy

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

VI. Rules and Regulations for all sworn and civilian CCSO employees

D. Prohibited associations, establishments, and activities.

25. Fail to cooperate or fail to be truthful with external and/or internal agencies in an investigation of a criminal or civil matter.

H. Reporting violations.

4. Employees are prohibited from making a false report, written or oral.

I. Cooperation within the CCSO and with other agencies.

CCSO employees shall:

1. Truthfully answer all questions, provide proper materials, and provide truthful and relevant statements when the employee is involved in an investigation, either as the subject or not, as long as the employee's rights are preserved.

**COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS**, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department, nor any Correctional Officer of the Cook County Department of Corrections, nor any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

3. violate any of the general orders, special orders, directives or rules and regulations of the CCSD.

**Issues Presented:**

Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

**Evidence Presented:**

A hearing was conducted on May 7, 2015 and June 10, 2015 at the Cook County Administration Building, 69 W. Washington Street, Room 1100, Chicago, Illinois. Present were Assistant State's Attorneys [REDACTED] and Assistant General Counsels [REDACTED] on behalf of the Cook County Sheriff and Attorney [REDACTED] on behalf of the Respondent [REDACTED] and [REDACTED] on behalf of the Respondent [REDACTED].

**The following exhibits were admitted into evidence:**

Joint Exhibits:

- 1 video of the incident
- 2 [REDACTED] notes taken during an interview of [REDACTED]
- 3 [REDACTED] medical record
- 4 Sheriff's Order 11.2.20.0
- 5 Sheriff's Order 11.2.1.0
- 6 General Order 4.1
- 7 General Order 24.9.1.0
- 8 General Order 3.8
- 9 Merit Board Article X
- 10 Complaint filed against [REDACTED]
- 11 Complaint filed against Bailey
- 12 [REDACTED] disciplinary form
- 13 Bailey's report

Sheriff's Exhibits:

- 1 Bailey's statement to OPR dated 3-17-2014
- 2 [REDACTED] statement to OPR dated 3-4-2014
- 3 Sheriff Incident Report with tracking number 120001224

[REDACTED] Exhibits:

- 1 [REDACTED] statement to OPR dated 3-12-2014
- 2 [REDACTED] complaint register
- 3 -
- 4 -
- 5 [REDACTED] notes from OPR interview of [REDACTED]
- 6 [REDACTED] background

Bailey's Exhibits:

1. -
2. A watch commander's preliminary finding signed by [REDACTED]

The following witnesses testified for the Sheriff:

[REDACTED]  
[REDACTED] (herein after "[REDACTED]") testified that he currently works at the Cook County Sheriff's Office, Department of Corrections Division XI, 3 to 11 shift. He had been with the CCSO for 3 years 8 months.

On March 27, 2012, he was working at the Division XI, 7 to 3 shift on AH tier. He explained that AH tier housed protective custody and transgender inmates. He did not see anything unusual happened between inmate [REDACTED] (herein after "[REDACTED]") and Correctional Officer John Bailey (herein after "Bailey"). He did observe [REDACTED] take his shirt off and swear and yell at Bailey for approximately 1 minute. He did not remember if Bailey said anything in response to [REDACTED]. He believed Bailey was on the tier to remove an inmate. [REDACTED] said Correctional Officer [REDACTED] (herein after "[REDACTED]") was present as a backup officer. He then observed [REDACTED] and Bailey move around the day room as [REDACTED] was yelling. He described the tier as having 12 cells on the bottom with 2 sets of stairs that go up to the top deck with 12 additional cells. There were 2 inmates housed in each cell total of 48 inmates on tier AH. [REDACTED] said [REDACTED] was overly aggressive toward Bailey but Bailey was able to grab [REDACTED] by the arm taking [REDACTED] to his cell. He did not hear [REDACTED] say anything to anyone. When [REDACTED] walked toward the cell, he observed [REDACTED] in handcuffs against the wall as [REDACTED] was packing up [REDACTED] property. Because [REDACTED] was watching other inmates, he did not know when [REDACTED] entered the cell. He did not observe [REDACTED] attempting to spit on the officers. Once they left the cell, [REDACTED] stopped at a desk to pick up [REDACTED] ID to give to the movement officer. [REDACTED] did follow behind Bailey and [REDACTED] as [REDACTED] was being escorted off the tier.

but [REDACTED] was not able to see what occurred in the hallway. He heard from other officers that [REDACTED] had spit on Bailey. Once [REDACTED] was in the hallway, he observed [REDACTED] sitting down against a wall. He did not observe Bailey striking or use force against [REDACTED] at any point. He did not fill out any report or speak to any supervisor regarding this incident.

A video of the incident was played. At 9:53:24, [REDACTED] explained that the individual walking out and throwing his shirt on the ground was [REDACTED]. The officer talking to [REDACTED] was Bailey as [REDACTED] appeared in the video. There was another officer who appeared to be [REDACTED]. [REDACTED] did not remember the conversation between [REDACTED] and Bailey. [REDACTED] said [REDACTED] was already in handcuffs when he walked up to the doorway of [REDACTED] cell.

Second video of the incident that occurred in the hallway was played. At 9:59:55, [REDACTED] walked out of the Tier AH with [REDACTED] right behind [REDACTED] where a stairwell was on the right-hand side. In the hall, [REDACTED] dropped [REDACTED] belonging by him as [REDACTED] sat on the ground. [REDACTED] did not see Bailey strike or push [REDACTED] into the wall.

On cross-examination by Bailey's attorney, [REDACTED] testified that while [REDACTED] and Bailey were walking around the day room, [REDACTED] was yelling at Bailey. He did not remember what [REDACTED] said to Bailey. [REDACTED] did not observe Bailey use any force against [REDACTED] in the day room. [REDACTED] said when [REDACTED] came out of his cell in handcuffs, he did not appear to have any injuries.

On cross-examination by [REDACTED] attorney, [REDACTED] testified that [REDACTED] Exhibit 1 was the statement he gave to OPR. [REDACTED] said the part of the statement that said "[REDACTED] stated when he got to the cell, the inmate was standing in cuffs, and Officer [REDACTED] was packing the inmate's belongings" was an accurate summary of what he told the OPR investigators.

[REDACTED] said he had been in a different building almost every day for the first 6 months. On the date of the incident, he was assigned to Division XI and had been there for 2 months but not every day because he was on the roster management which meant that he filled in gaps when other officers were off. He was not given specific direction or training as to how to operate as an officer in Division XI except what he learned in the academy. [REDACTED] said he had never dealt with disruptive inmates prior to this incident. He was not asked by any sergeants or lieutenants to complete a use of force report. He said since there was no use of force, there was no need to fill out a use of force report. He did not believe this incident warranted a completion of an incident report either. [REDACTED] said during the incident in the day room, [REDACTED] was yelling and swearing at Bailey using F word. After reviewing the video of the day room, [REDACTED] said there were about 12 to 13 inmates in the day room. [REDACTED] explained that as long as the inmates were not threatening or misbehaving, they can go anywhere in the day room, talk on the phone, watch TV, work out or play cards. He characterized [REDACTED] behavior of taking his shirt off to be disruptive. [REDACTED] said he did not hear anyone call [REDACTED] a faggot, bitch or homosexual but he did hear one of the officers tell [REDACTED] "go pack your shit." He did not observe any officers place [REDACTED] in a head lock, punch [REDACTED] in the eye, observe [REDACTED] fall to the ground in the day room, knee or elbow [REDACTED] in the face, ribs, and/or spine area, beat on for 5 to 10 minutes, or laugh at [REDACTED]. [REDACTED] did not observe [REDACTED] to have a black eye or walk with a limp holding his ribs. [REDACTED] was not disciplined for this incident.

[REDACTED] said he did not know if [REDACTED] was taken to a medical unit after this incident. On March 12, 2012, [REDACTED] was the officer responsible for filling out the log book. He did not put anything in the log book about this incident because nothing happened. An inmate being moved to another tier was every day thing. The fact that [REDACTED] had handcuffs did not require a



completion of a use of force report because all inmates were placed in handcuffs when being moved. Based on his training, [REDACTED] believed that when an incident involved a use of force, only one officer who was involved in the incident was required to complete a report.

[REDACTED] (herein after " [REDACTED] testified that he had been employed by the CCSO from 1985 to 2014 and currently retired. He was the Deputy Director at the Cook County Sheriff's Training Institute prior to retiring. In March of 2014, he was assigned to the use of force task force with Investigator [REDACTED] (herein after " [REDACTED] of OPR. He was assigned to investigate this matter sometime in February and March of 2014. He received a file with a complaint register and other documents including officer's report, incident report, medical report, and list of officers on duty at the time of the incident. After reviewing all documents, he investigated 3 officers: [REDACTED] [REDACTED] and Bailey. The allegation made by [REDACTED] was that Bailey punched him in the face while in the cell and shoved him into a door with a glass window. [REDACTED] said that he interviewed [REDACTED] Bailey, [REDACTED] and [REDACTED] in person. [REDACTED] also interviewed [REDACTED] on the phone.

Sheriff's Exhibit 1 was the statement given by Bailey to OPR on March 17, 2014 with attachments (notice of charges, waiver of counsel, and administrative proceeding rights). Present during this interview was [REDACTED] Bailey, and Bailey's Union Representative. Once all attachments were read and signed, [REDACTED] conducted an interview. The statement of Bailey was typed up, reviewed, and signed by all parties. Bailey was allowed to make any changes but chose not to. [REDACTED] signed 2 statements because the first one had [REDACTED] name at the top which was a mistake. The 2 statements were exact same except for the names at the top.

During this interview, Bailey told [REDACTED] that an inmate was being transferred from one tier to another. The inmate did not want to pack his stuff for the transfer and so Bailey was there to help with the transfer. The inmate became agitated, made threatening gestures toward him, and threw off his shirt in the day room. While in the cell, Bailey said that the inmate charged at him and he had to take him down to the ground to handcuff him. [REDACTED] classified Bailey's behavior of taking the inmate down to the ground to handcuff as use of force because force was used to subdue and control the inmate. Bailey further said that once the inmate was under control, his belonging packed, they walked out of the tier. As they were walking, other inmates were telling [REDACTED] to spit at Bailey at which time [REDACTED] said, "Yeah, I'm going to spit at him." As they were leaving the tier, Bailey said [REDACTED] spit on the ground. Bailey told [REDACTED] that "you can spit on the ground, but you're not going to spit on me." Bailey then told [REDACTED] that [REDACTED] attempted to spit at him at which time, Bailey pushed [REDACTED] from behind into a wall. The Sheriff's Exhibit 1 said that "I pushed [REDACTED] into the wall, then folded his arm up and laid him down on the floor across the hall." [REDACTED] said Bailey told him that [REDACTED] was present in the cell when Bailey took [REDACTED] down to the ground to handcuff him. [REDACTED] then showed Bailey the videos of the incident in the day room and hallway. In the video of the incident that occurred in the hallway, it showed [REDACTED] walking out facing a wall as he was handcuffed behind his back and Bailey coming behind [REDACTED] shoving him in the middle of the back into a wall. From the video, [REDACTED] said he did not observe [REDACTED] attempting to spit at Bailey. [REDACTED] explained that after the incident in the cell, [REDACTED] should have been escorted when walking into the hallway which meant that Bailey should have been in control of the inmate. The video showed [REDACTED] walking into the hallway by himself and then Bailey walking up behind shoving him into a wall.

The video then showed Bailey taking control of [REDACTED] and bringing him to the other side of the hall, putting him on his knees and then to the ground. After Bailey reviewed the video during the interview, he did not change his statement or offer any explanation as to what had happened. [REDACTED] asked Bailey if he had called for a supervisor and Bailey told him that he had called for a supervisor after [REDACTED] was on the floor.

[REDACTED] interviewed [REDACTED] at the OPR conference center along with [REDACTED] and [REDACTED] Union Representative. Sheriff's Exhibit 2 was [REDACTED] statement along with attachments (notice of allegations, administrative rights, and waiver of counsel). After all the attachments were read and signed, the interview took place. The statement made by [REDACTED] was reduced to two page document as part of Sheriff's Exhibit 2, signed by all parties as being accurate. [REDACTED] was allowed to review the statement and make changes at which time he chose not to. [REDACTED] told [REDACTED] that on March 27, 2012, he was working the core which was outside the tier but heard that there was a problem in the tier so he went into the tier to be a backup officer. [REDACTED] told [REDACTED] that other officers may have called for a supervisor but that supervisor had not responded. He observed [REDACTED] being aggressive toward officers by ripping his shirt off and throwing it on the table in the day room. He explained that he believed [REDACTED] was mad because the officers called him "Mister" and that Tier AH was protective custody housing transgendered inmates. He said Bailey told [REDACTED] to go to his cell and pack his stuff. [REDACTED] did not see Bailey make any contact with [REDACTED] while in the day room. He himself did not make any contact with [REDACTED]. [REDACTED] said Bailey escorted [REDACTED] to the cell. Inside the cell, Bailey told [REDACTED] to pack his stuff and asked which bunk was his. [REDACTED] said, "I ain't packing nothing." [REDACTED] entered the cell at that point and told [REDACTED] that he was going to pack his stuff. [REDACTED] packed all of [REDACTED] belongings in a sheet. [REDACTED] said that [REDACTED] stood next to Bailey by the doorway as he packed the stuff. [REDACTED] said nothing happened inside the cell. [REDACTED] said that only Bailey and he were in the cell with [REDACTED]. Once packing was done, Bailey put handcuffs on [REDACTED]. Bailey escorted [REDACTED] out of the cell off the tier, and [REDACTED] followed as he was the last one to leave the cell. He did not observe Bailey use any force against [REDACTED] and therefore, he did not submit use of force paperwork. He also believed that Bailey included him when Bailey filled out the use of force/incident report. [REDACTED] then told [REDACTED] that he exited tier and entered the hallway where he observed [REDACTED] sitting on the floor bleeding. He did not know how or where [REDACTED] was injured. After observing this, [REDACTED] dropped [REDACTED] belongings on the floor near [REDACTED] and called for a lieutenant.

In the first video of the day room, [REDACTED] said he observed [REDACTED] and Bailey walking around the day room; Bailey took control of [REDACTED] and walked [REDACTED] toward the open cell door underneath the stairway with [REDACTED] behind Bailey. In front of the stairway was [REDACTED] moving toward the cell door and then [REDACTED] was seen standing in the doorway of the cell.

Once the investigation was completed, [REDACTED] found that Bailey had violated orders, rules and regulation when he used excessive force against [REDACTED]. This happened when Bailey shoved [REDACTED] from behind while [REDACTED] was standing in the corridor with his back to Bailey in handcuffs. [REDACTED] did not sustain a charge of excessive force used by Bailey for the incident inside the cell because he could not see inside the cell from the video. [REDACTED] concluded that Bailey was not truthful to him regarding the incident in the hallway. [REDACTED] did not see [REDACTED] spit at Bailey or even attempt to spit at Bailey. [REDACTED] believed that [REDACTED] was defenseless facing the wall in handcuffs. He believed Bailey used excessive force in the hallway because he did not see [REDACTED] take any aggressive move toward Bailey.



In addition, [REDACTED] found that [REDACTED] had violated orders, rules and regulations when he failed to write a use of force report. Based on the statement made by Bailey, [REDACTED] and review of the video, [REDACTED] believed that [REDACTED] was not being truthful as to what had happened in the cell. [REDACTED] had said that he saw absolutely nothing in the cell which was completely inaccurate compared to Bailey and [REDACTED] statements. [REDACTED] said that [REDACTED] was required to fill out a use of force report or an incident report when he witnessed the use of force even without a commander ordering him to do so. [REDACTED] further said that Bailey's use of force report did not relieve [REDACTED] from filling out his own use of force report pursuant to the Sheriff's General Orders. [REDACTED] did not file charges against [REDACTED] because there was nothing in the Bailey's, [REDACTED] statements or the video that showed that [REDACTED] had done anything or took part in any way. Once [REDACTED] was done with the investigation, he turned in his reports to his supervisor and it went through the Command Channel Review.

On cross-examination by [REDACTED] attorney, [REDACTED] testified that when sustaining charges against [REDACTED] he relied on the video, [REDACTED] statements, Bailey's statement and [REDACTED] statement in addition to the general orders that applied to this matter. [REDACTED] said that [REDACTED] statement was different from [REDACTED] and Bailey's statements in that [REDACTED] said nothing happened in the cell but [REDACTED] and Bailey both said that there was an incident inside the cell. [REDACTED] said he reviewed both [REDACTED] statement to OPR and a handwritten complaint register. [REDACTED] interviewed [REDACTED] on the phone in addition to Investigator [REDACTED]. In this interview, [REDACTED] told [REDACTED] that Bailey punched him in the face, threw him on the ground, handcuffed him and kned him inside the cell. [REDACTED] did review the medical report but did not remember if there was any injury to [REDACTED] abdominal area. [REDACTED] did remember that when [REDACTED] interviewed [REDACTED] the day after the incident, [REDACTED] had a black eye. [REDACTED] Exhibit 2 was a copy of [REDACTED] complaint register that contained his signature along with a notary public's signature that demonstrated that the statement was accurate and that the complainant was committing perjury if he/she was untruthful. [REDACTED] said that he did review this document as part of his investigation along with [REDACTED] medical record (Joint Exhibit 3) and [REDACTED] notes from the interview of [REDACTED] (Joint Exhibit 2). [REDACTED] said he reviewed [REDACTED] notes prior to typing up [REDACTED] statement. [REDACTED] said he reviewed [REDACTED] background during his investigation that showed that [REDACTED] was charged with obstruction of justice but he did not know whether [REDACTED] was convicted. [REDACTED] agreed that the purpose of an Incident Report Form was to report incidents and there was a special meaning attached to the word "incident". In [REDACTED] OPR statement, [REDACTED] said that "[t]here was absolutely no incident in the cell." [REDACTED] did not ask [REDACTED] in what sense he was using the word "incident". [REDACTED] told [REDACTED] that it was he who packed up [REDACTED] belonging in a sheet. One of the reasons why [REDACTED] did not sustain charges against [REDACTED] was because nobody put him in a position to see what had happened. [REDACTED] concluded that [REDACTED] saw what had happened inside the cell when [REDACTED] was standing in front of the cell as shown on the video when Bailey used force. A part of the video was played at 9:57:12 where [REDACTED] entered the cell where Bailey and [REDACTED] were inside. [REDACTED] did not fill out any use of force report. [REDACTED] said [REDACTED] would not have to fill out any report if he had not seen anything inside the cell. Sometime in February 2014, [REDACTED] called [REDACTED] and told him that he no longer wanted to pursue his complaint but did not give any reason. [REDACTED] denied telling [REDACTED] during the OPR interview that nothing would come out of this and he did not see any other investigator telling [REDACTED] the same.

On cross-examination by Bailey's attorney, [REDACTED] testified that Bailey was consistent with his statements during the OPR interview compared with the report he had filed previously. In the [REDACTED] complaint register ([REDACTED] Exhibit 2), [REDACTED] wrote that "Correctional Officer Bailey then grabbed me, punched me in the knee, elbowed me several times in my face, ribs, spine area" however, when [REDACTED] spoke to [REDACTED] [REDACTED] told him that Bailey had punched him in his face. [REDACTED] said that it was true that handcuffing an inmate did not necessarily require the use of force report. [REDACTED] said Bailey took [REDACTED] down to the ground to handcuff him which required the use of force report. A part of the video was played at 9:55:48 where Bailey made contact with [REDACTED] twice chest to chest. [REDACTED] explained that in the video, [REDACTED] was agitated and aggressive but at some point, as they were walking around the day room, [REDACTED] stopped. Bailey then bumped [REDACTED] chest to chest twice. Bailey could have handcuffed [REDACTED] called for a Supervisor, a camera, or OC spray. [REDACTED] explained that Bailey had enough backups with 4 to 5 officers in the day room during the incident. [REDACTED] did not sustain any charges against Bailey for the incident in the day room. [REDACTED] said that from what he saw on the video of the incident in the hall way, [REDACTED] did not spit or attempt to spit at Bailey. There was no audio to this video. It was Bailey who told him that [REDACTED] told him that he was going to spit at Bailey. What [REDACTED] saw on the video was that [REDACTED] came around the corner facing a wall and the only time [REDACTED] moved was when Bailey shoved him against a wall. [REDACTED] said if an inmate did spit on an officer, it could be considered battery. Joint Exhibit 3, [REDACTED] medical record said that [REDACTED] had a laceration to right forehead when his head was slammed into a window by officer. [REDACTED] agreed that when Bailey told him that he pushed [REDACTED] into a wall, Bailey's statement was consistent with the video.

On redirect examination, [REDACTED] testified that during [REDACTED] OPR interview, [REDACTED] told [REDACTED] that he observed Bailey handcuff [REDACTED] in the cell. Joint Exhibit 13, Bailey use of force report, stated that [REDACTED] was the "moving resister" and checked off boxes for "slightly evasive movement of arm" and "flailing" to describe [REDACTED] behavior. Under the officer's response, the box for "take down/emergency handcuffing" was checked off. [REDACTED] explained that when an officer performed a takedown and had to perform emergency handcuffing of an inmate, the officer must fill out a use of force report. [REDACTED] said that he did not make a finding that Bailey used excessive force against [REDACTED] in the cell because he saw no evidence that told him that had happened. He did believe that force was used in the cell based on both Bailey's and [REDACTED] statements. He said he didn't know why both Bailey and [REDACTED] would say that force was used if nothing happened as [REDACTED] claimed.

On re-cross examination by [REDACTED] attorney, [REDACTED] testified that the Joint Exhibit 13, Bailey use of force report only described what happened outside Tier AH in the hallway.

On re-cross examination by Bailey's attorney, [REDACTED] testified that Respondent's Exhibit 5, Tia [REDACTED] notes from the OPR interview was considered and reviewed when [REDACTED] typed up statement.

[REDACTED]

[REDACTED] (herein after '[REDACTED]') testified that he was employed by the CCSO from August 1, 1979 to August 1, 2014. He had retired as a lieutenant. On March 27, 2012, he worked in Division XI and was the shift commander for 7 to 3. [REDACTED] was informed by Bailey that use of force was used but Bailey did not elaborate what kind of force was used. [REDACTED] sent a supervisor to investigate. As the lieutenant and the shift

commander, [REDACTED] role was to investigate it, fill out the use of force paperwork, make sure all other paperwork was done, notify his supervisor, and get medical treatment. Sheriff's Exhibit 3 was the Sheriff Incident report, incident tracking number [REDACTED] involving Bailey and [REDACTED] dated March 27, 2012. [REDACTED] filled out the portion for the action taken by the supervisor and Bailey filled out the incident portion. [REDACTED] explained that when force was used, the officer must notify a supervisor, fill out an incident report, use of force report, and get medical treatment for the inmate. A witness that was an officer must also fill out the use of force report. He did not recall if [REDACTED] filled out any report. He did recall [REDACTED] receiving medical treatment. [REDACTED] said he notified Commander Harris and Superintendent Everhart who reviewed the video and contacted OPR and the Sheriff's Police.

On cross-examination by [REDACTED] attorney, [REDACTED] testified that [REDACTED] Exhibit 3 was a statement made by [REDACTED] signed by [REDACTED] but taken by the watch commander from the Sheriff's Police with star number 207. [REDACTED] said he did not speak to the watch commander about this statement but did not have any doubt that it was less than a complete statement made to the watch commander. [REDACTED] said [REDACTED] Exhibit 3 was made part of the use of force report that was faxed over to the superintendent, Sheriff's Police, and OPR. [REDACTED] said it was his signature on [REDACTED] Exhibit 3 but everything else including his handwritten name, date and the statement were not his. [REDACTED] did not remember if he personally interviewed [REDACTED] but said that if a use of force was used and [REDACTED] was a witness, [REDACTED] should have completed a witness statement. [REDACTED] did interview Bailey since Bailey had to file an incident report and use of force paperwork. [REDACTED] did not recall [REDACTED] [REDACTED] agreed that an officer was not required to fill out a use of force report to for handcuffing a detainee who did not resist. [REDACTED] acknowledged that he worked with [REDACTED] for approximately 4 to 5 years in Division XI and across other compounds. He had the opportunity to observe [REDACTED] at work and during those times, he had not observed [REDACTED] to perform his duties poorly. [REDACTED] believed that [REDACTED] came to work, did his job and had not seen any disciplinary actions.

On cross-examination by Bailey's attorney, [REDACTED] testified that Sheriff's Exhibit 3 said that the time of the report was "17:25"; incident shift was "Days"; incident type was "Battery to staff"; and action taken was "reviewed the video." [REDACTED] said he reviewed the video along with Commander [REDACTED] and Superintendent [REDACTED] Bailey's Exhibit 2 was the report from the watch commander's preliminary finding based upon available information, and signed by [REDACTED] at 17:35. The watch commander's preliminary finding was that "all officers acted in accordance with department policy." At the time of the report, [REDACTED] believed that all officers acted accordance with the department policy.

The following witness testified on behalf of the Respondents:

[REDACTED]

[REDACTED] (herein after "[REDACTED]" was called by Bailey's attorney. [REDACTED] is currently employed by Teamsters Local 700 as a business agent and had been so for 3 years. He worked in the CCDOC grievances, arbitrations, and negotiating contracts. Prior to this, he worked at CCDOC for approximately 30 years. He started as an officer, promoted to sergeant, to lieutenant, to captain, to chief, superintendent, to assistant director, down to superintendent, and retired as a commander. The last assignment at the CCDOC was to train officers in the use of

force policy at Moraine Valley Community College in 2011. This new policy came into effect in September 2011 after all officers received 8 hour training. [REDACTED] believed that the policy he taught in 2011 did not change. He said the standard for use of force was that if the officer feared for his life, life of others, and that there was imminent danger or injury, the officer had to react and use force necessary to prevent that considering totality of the circumstances.

Bailey's attorney attempted to ask [REDACTED] if what Bailey did was within the scope of the standard for the use of force policy. He's testimony was objected based on improper expert witness. [REDACTED] was not disclosed as an expert witness and the testimony that was being elicited would have been qualified as an expert witness. This witness was not allowed to give opinion as to whether Bailey followed the use of force policy.

[REDACTED]  
[REDACTED] (herein after "[REDACTED]" was called by [REDACTED] attorney. [REDACTED] is currently employed by CCDOC as a correctional officer and had been there for 25 years. She worked in Division XI in March 2012 and at that time; she had been there for 2 years. She worked 7 to 3 shift on March 27, 2012. She remembered the incident that occurred between Bailey and [REDACTED]. She was interviewed by OPR and gave a statement, marked as [REDACTED] Exhibit 4. The statement stated that she did not recalled the incident clearly, she did not recall the conversation that was going on between Bailey and [REDACTED] she did not recall hearing a struggle or a scuffle in the cell, she did not see [REDACTED] get hit, and she did not recall seeing anything in the hallway outside of the tier. During the incident, [REDACTED] was doing paperwork for segregation and classifications that took place outside of the tier in a fully enclosed office. She said she was depicted in the video at 9:56:08 as the officer leaning over a table, bottom left-hand side. She was in the day room because of an altercation between 2 inmates that were having a relationship. She did not recall personally seeing [REDACTED] come out of his cell. [REDACTED] explained that if there was an altercation between an inmate and an officer, other inmates would have been all over it. She classified an officer/inmate use of force incident as "not that often." She explained that if an incident occurred in a cell where other inmates became aware of it, they would rush toward the cell.

On direct examination by Bailey's attorney, [REDACTED] testified that she did not remember how the incident occurred, but she did remember that [REDACTED] was not in compliance, became hostile, took off his shirt, and yelled at Bailey. She said the officers escorted him to try to pack his stuff so that he could be escorted to the hole. She did not believe Bailey touched [REDACTED] in the day room.

On cross-examination, [REDACTED] testified that when detainee and officer yell at each other, other inmates yell and scream too. After seeing part of the video, [REDACTED] said that the other inmates remained calm as Bailey and [REDACTED] were exchanging words. There was an inmate in the video who was a transgender that [REDACTED] was upset about. This was the inmate that [REDACTED] was focused on and not others in the day room. As [REDACTED] was being escorted to his cell by Bailey, [REDACTED] was having a conversation with the transgender inmate. The transgender inmate became angry and threw a deck of cards on the table. [REDACTED] then escorted the transgender inmate off the Tier AH without using force and was not required to fill out an incident report.



██████████ (herein after "██████████" was called by ██████████ attorney. ██████████ is employed at CCDOC and had been so for the past 21 years. In March 2012, he worked at Division XI, 7 to 3 shift. ██████████ watched the video of the incident. He identified himself at 9:56:22 as the officer between the two tables to the far right of the screen. At 9:56:11, he saw people coming out of a cell toward the exit. He said that he held the door coming out of the tier for the 2 officers and an inmate. As ██████████ watched ██████████ walking, he did not observe limping, bleeding or injured in any way. ██████████ did not hear ██████████ say anything about officers using force on him. At 9:59:36, ██████████ identified ██████████ as the man with shirt off and red pants. The officer at the right hand corner was ██████████ who appeared to have something in his hand. ██████████ did talk to OPR about this incident but did not remember if he had talked about whether ██████████ was injured or not.

On cross-examination, ██████████ testified that as he was holding the day room door, he did not observe ██████████ spit on Bailey, on the ground nor say anything about attempting to spit on Bailey. Once the officers and inmate walked through the door ██████████ was holding, he followed them after 1 minute later. He did not observe what had happened in the hallway.

On redirect examination by Bailey's attorney, ██████████ testified that at 9:53 on the video, ██████████ was irate and started cursing and shouting at Bailey. ██████████ did not observe Bailey touching ██████████ ██████████ explained that the other officers were standing around for safety but there was no incident meaning no physical incident, just swearing. Bailey was able to calm ██████████ down at some point without getting physical. ██████████ again explained that he did not intervene because it was not an incident and he believed that Bailey was handling it.

██████████ ██████████ testified on his behalf. ██████████ testified that he is currently employed by CCDOC as a correctional officer and had been so for 20 years. He first started in Division X, then to Division IV and then to Division XI. He had been at Division XI for the past 4 years at 7 to 3 shift. He explained that he was a part of a crew that moved within the division to smooth out the rough parts. He had not bid for this assignment but was assigned to this crew about 3 years prior by Lt. ██████████ and Director ██████████. On March 27, 2012, ██████████ worked from 7 to 3 shifts and approximately 10 am, he was in the day room, and he was present during an occurrence between Bailey and ██████████. ██████████ said he was interviewed by OPR and gave a statement, Sheriff's Exhibit 2. He was in upper A Pod that consisted of 4 tiers that housed transgender inmates, protective custody inmates, and inmates with disciplinary problems. ██████████ believed that the transgender inmates had their own tier, because they had problems with the general population; the protective custody inmates were either high profile cases or inmates that could not be around other inmates; and the last group was inmates with infractions. ██████████ explained that these inmates were dangerous. ██████████ viewed a part of the video; he said at 9:56:06, he was the officer by the stairs backing up Bailey who was heading to the cell. Bailey did not ask for assistance but ██████████ said he was doing his job which was part of his standard training. At 9:56:22, ██████████ said he was standing at the door of the cell observing both Bailey and ██████████. ██████████ said there was no need for him to get involve because he only observed "verbal back and forth between" ██████████ and Bailey. ██████████ explained that ██████████

insulted Bailey as Bailey was telling [REDACTED] to pack his belongings. [REDACTED] described the cell as having a sink, a mirror and a toilet with bunk beds to the right, a wall to the left, and a desk below a window in the back. In the cell, [REDACTED] said he observed [REDACTED] sitting on one of the bunk beds and Bailey standing in front of the bunk between the toilet and the bunk. Bailey told [REDACTED] to pack up his belongings about 4 times and [REDACTED] refused it. [REDACTED] confirmed that from 9:56:23 to 9:57:11, he was standing at the doorway of the cell. At 9:57:11, [REDACTED] entered the cell when he observed [REDACTED] stand up from the bunk and take "an aggressive stance towards" Bailey with his fists balled up as [REDACTED] was yelling insults at Bailey. [REDACTED] entered the cell and told [REDACTED] to turn around at which time he complied. Bailey then handcuffed [REDACTED]. [REDACTED] said that he asked [REDACTED] about his belongings and started to pack up the stuff that was on the bottom bunk in a blanket and a sheet. As [REDACTED] was packing, he had his back toward [REDACTED] and Bailey as they were standing in the front part of the cell. [REDACTED] did not assist Bailey in handcuffing [REDACTED]. [REDACTED] said [REDACTED] did not enter the cell until later. [REDACTED] did not observe [REDACTED] lying on the floor; hear any scuffle or any physical altercation as he was packing. [REDACTED] described [REDACTED] behavior as non-resistant when he was being handcuffed by Bailey. [REDACTED] said that he was not required to complete a use of force report for a non-resistant handcuffing. [REDACTED] said he did not complete a use of force report "because no use of force happened" in his presence. He did receive training in filling out a use of force report during CCDOC in-service training that was offered once a year. When he told OPR that no incident occurred in the cell, [REDACTED] meant that no physical altercation occurred in the cell. While in the cell, [REDACTED] did not hear [REDACTED] complain about injuries or observe any injuries on [REDACTED]. Once [REDACTED] came into the cell, they all exited and walked toward the exit door of the day room which was being held open by [REDACTED]. As [REDACTED] was walking behind [REDACTED] and Bailey, he did not observe Bailey use force on [REDACTED]. As they walked toward the hallway, [REDACTED] dropped [REDACTED] belongings by him.

Joint Exhibit 7 (General Order 24.9.1.0 Reporting Incident) was shown to [REDACTED]. [REDACTED] said this exhibit applied to this incident that occurred in March 2012. On the second page of the exhibit, under "Definition", [REDACTED] said that the interaction between Bailey and [REDACTED] did not fall into any of the four examples listed. [REDACTED] then said that the incident between Bailey and [REDACTED] did fall under what he would consider a "reportable incident" but not "serious incident" based on his 20 years of experience. He believed that Bailey had reported this incident by filing an incident report which was marked previously as Sheriff's Exhibit 3. [REDACTED] did not believe multiple officers were required to complete an incident report. He did not file an incident report because he did not have "any action" with [REDACTED] because he was the back-up officer. He believed Bailey was responsible for filing an incident report because Bailey was the initial officer for the incident. [REDACTED] did not fill out a use of force report either because "no use of force occurred" in his presence. [REDACTED] said that he observed officers handcuff non-resistant detainees every day and none were required to fill out a use of force report. He had never been disciplined or counseled for not filling out a use of force report when handcuffing non-resistant detainees.

Joint Exhibit 5 (Sheriff's Order 11.2.1.0 Response to Resistance/Use of Force Policy) was shown to [REDACTED]. [REDACTED] explained that this policy was in effect on March 27, 2012. [REDACTED] was familiar with all sections under this policy. He believed that [REDACTED] was handcuffed in the cell so that the non-physical incident did not escalate between Bailey and [REDACTED]. The officers' intent was to remove [REDACTED] from the tier because [REDACTED] was being aggressive and disruptive.

██████████ said he was interviewed by OPR twice as an accused. This incident was the second and the first was unfounded approximately a year ago. He was also interviewed by OPR as a witness a year ago. When he was called to OPR and interviewed on March 4, 2014, he was not nervous but did not understand that the statement he gave could have been used against him at a Merit Board hearing. It took him 2 to 3 minutes to review Sheriff's Exhibit 2 prior to signing it.

On direct examination by Bailey's attorney, ██████████ testified that ██████████ was verbally aggressive toward Bailey in the cell. He stood there and watched until ██████████ stood up from his bunk and take an aggressive stand toward Bailey. ██████████ did not observe Bailey use force on ██████████. ██████████ did observe Bailey put handcuff on ██████████ but described this incident as "a non-resistance handcuffing." ██████████ did not observe Bailey get on top of ██████████ turn ██████████ over, punch ██████████ in the eye, knee ██████████ in the shin or kick ██████████ in the ribs. ██████████ said that ██████████ stopped insulting Bailey when he was handcuffed and no force was used when handcuffing.

On cross-examination, ██████████ testified that in the day room ██████████ was aggressive, combative, using foul language, and refused to listen to orders. In fact, ██████████ was escorted to his cell by Bailey. When ██████████ walked to the cell, Bailey and ██████████ were already inside the cell but ██████████ was not handcuffed at that time. ██████████ did see ██████████ being handcuffed by Bailey in the cell after ██████████ had been aggressive and combative toward Bailey. ██████████ did not see ██████████ charge at Bailey in the cell. ██████████ did not see Bailey take ██████████ down to the ground because ██████████ complied with Bailey when he was told to turn around so he could be placed in handcuffs. ██████████ did not see Bailey use any force on ██████████ when placed in handcuffs. ██████████ said that if he had seen Bailey use force on ██████████ to put handcuffs, he would have filled out the use of force report. ██████████ said he had his back on ██████████ and Bailey when he started to pack up ██████████ belongings but that was after ██████████ was already in handcuffs. As they were leaving the cell, ██████████ said he and ██████████ were side to side behind Bailey and ██████████. ██████████ did not see ██████████ spit at Bailey, on the ground, or observe ██████████ threatening to spit at Bailey. ██████████ said that he had talked to OPR on March 4, 2014 but had not finish so he came back on March 5, 2014 to sign his statement which was Sheriff's Exhibit 2. ██████████ said he knew he had an opportunity to secure a legal counsel but chose not to do so. He was given his administrative rights and told that any statement he made could be used against him in a disciplinary proceeding. When ██████████ came back to OPR on March 5, 2014, he was given opportunity to review his statement prior to signing it in the presence of a Union Steward ██████████, ██████████ and ██████████. He was not given time restriction when reviewing his statement. ██████████ agreed that as a correctional officer, you have the responsibility to protect the safety and security of detainees and staff as well as to be honest when filling out reports and speaking to OPR investigators. In his statement (Sheriff's Exhibit 2), ██████████ agreed that he said, "CO ██████████ stated he thought Officer Bailey included him on his use of force/incident report." ██████████ said that he meant was that he believed Bailey included his name on the incident report. ██████████ agreed that Bailey would have been required to fill out use of force report if he had used force when handcuffing ██████████. Sheriff's Exhibit 3 which was an Incident Report was what ██████████ was referring to in his statement. ██████████ name was not mentioned on Sheriff's Exhibit 3. ██████████ said that his name should have been included in the narrative portion of Sheriff's Exhibit 3.

On redirect examination by ██████████ attorney, ██████████ testified that he did not type up his statement. It was done by ██████████. ██████████ again stated that when he used "use of



force/incident report" in his statement, he was talking about regular incident report. He had thought that Bailey had included his name in the narrative portion of the incident report but he did not check to see if it was done. [REDACTED] did not mean that Bailey was required to fill out use of force report because in the use of force report, Bailey could not put [REDACTED] name as a backup officer. [REDACTED] said he was truthful with OPR and that he did not intent to deceive or omit information. [REDACTED] said he was given one notification by OPR and had complied right away without rescheduling.

On redirect examination by Bailey's attorney, [REDACTED] testified that there was no reason to fill out use of force report because there was no force used on [REDACTED]. [REDACTED] did say that he did not hear [REDACTED] say to Bailey that he was going to spit. However, [REDACTED] was 15 feet behind talking to [REDACTED].

Upon questioning by the Board Member, [REDACTED] testified that once they left the day room, they did not encounter any other inmates prior to being captured on the video in the hallway. [REDACTED] said he did not hear any other inmates telling [REDACTED] to spit on the officers. He did not hear or see [REDACTED] spit on Bailey. He explained that a takedown happened when you grab an inmate and take him/her to the floor. [REDACTED] did not see a takedown or any physical altercation taking place in the cell. [REDACTED] said he was the one that told [REDACTED] to turn around which [REDACTED] complied and Bailey put handcuffs on [REDACTED]. [REDACTED] said he was surprise to hear that Bailey said he had taken down [REDACTED] in the cell. [REDACTED] further said that he was in the cell the whole time with Bailey and [REDACTED].

On redirect examination by Bailey's attorney, [REDACTED] said he was still in the day room walking when Bailey and [REDACTED] were walking ahead of him in the hallway.

#### **JOHN BAILEY:**

John Bailey testified on his behalf. Bailey had been employed by the CCDOC for 19 years. Bailey currently works in the warehouse, in the document destruction unit. Prior to that, he worked in Div. XI for 18 ½ years. On March 27, 2012, Bailey worked in the Div. XI, upper A Pod which had protective custody and transgender inmates. He was assigned there for 180 days. The video of the day room was played for Bailey. At 9:52:34, Bailey was standing in the middle of the day room talking to an inmate name [REDACTED] because [REDACTED] and [REDACTED] were fighting and [REDACTED] was being removed. While [REDACTED] was in his cell, Bailey told [REDACTED] to get up, shut up and to move. [REDACTED] heard this exchange and came out of his cell saying, "you don't talk to my bitch like that and that he would beat Bailey's ass." [REDACTED] came out running at Bailey and took his shirt off. Bailey told [REDACTED] that he was not going to do anything. The other officers said to "take him down, cuff him." Bailey told the other officers not to touch [REDACTED]. Bailey told the other officers that he knew [REDACTED] and that [REDACTED] was not going to hit him. He described [REDACTED] behavior as non-compliant when he refused to go to his cell and pack his belongings. [REDACTED] became loud to the point he was yelling at Bailey. Bailey said he told [REDACTED] "go pack your shit." Bailey said at no time in the day room, he touched [REDACTED]. At 9:56:04, Bailey escorted [REDACTED] to his cell as [REDACTED] was walking behind them.

Bailey was shown Sherriff's Exhibit 1 which was the statement Bailey had given to OPR. Bailey said that in Paragraph 4 where it said, "[REDACTED] became aggressive, charging at me, getting in my face", he meant that [REDACTED] was sitting on his bunk, was not packing his belongings, got off his bunk with his fists balled up and walked up to Bailey's face and said, "there are no cameras in here." Bailey said he did not touch him at this time. In his statement, Bailey said that he took

down to the ground and handcuffed him. Bailey explained that he did not have handcuffs but that [REDACTED] did. [REDACTED] told [REDACTED] to "get on the wall." [REDACTED] gave Bailey his cuffs and started to pack [REDACTED] stuff. Bailey put one cuff on [REDACTED] while [REDACTED] was packing [REDACTED] stuff, [REDACTED] started to walk away from Bailey, and Bailey pulled [REDACTED] arm causing [REDACTED] to go down to a knee. [REDACTED] then gave Bailey his other arm and Bailey was able to put the other cuff. Bailey further explained that [REDACTED] never went down to the ground but that he went down to one of his knees. Bailey said he did not physically pull [REDACTED] down to the ground, hit him, flip him on his stomach, kick him in the ribs, nor punch him in the eye. Bailey said as they were leaving the cell, walking pass other inmates, one of the transgender inmates said, "I would have spit in his face" at which time [REDACTED] replied by saying, "I should spit in his face."

At 9:59:40 in the video, Bailey said that the person in the video was [REDACTED] but that [REDACTED] face was blocked by a pillar by the stairs. Bailey explained that [REDACTED] at this time spit on the wall and spit in Bailey's direction. Bailey said he was splattered by the spit. At this time, Bailey said it was just [REDACTED] and him in the hallway. Bailey said he pushed [REDACTED] face as soon as [REDACTED] spit because he did not want to be spit on by [REDACTED]. Bailey said that as an officer, he was trained by the Sheriff's Office to react to a battery and that he believed inmate spitting on officer was a battery. Bailey feared that he was going to be battered so he pushed [REDACTED]. He did not intent to push [REDACTED] to the wall causing injuries. Bailey's statement did not say that he reported to OPR about [REDACTED] bleeding from hitting a wall. However, Sheriff's Exhibit 3, the incident report did say that [REDACTED] was taken for medical attention. Bailey said he was not required to fill out an incident report for handcuffing because handcuffing was not an incident since [REDACTED] only went down to a knee. Bailey said he did not use force in the cell. He had never been charged with inmate abuse nor had a charge sustained against him for excessive use of force prior to this incident.

On cross-examination, Bailey agreed that he had responsibilities to protect the safety and security of detainees and staff; and that no matter how abusive a detainee may get toward him, he cannot respond with excessive force, however, a proper amount of force can be used. He knew that he must be truthful in his reporting and to OPR. Bailey described [REDACTED] behavior on March 27, 2012 as aggressive, combative and not listening to his commands. Bailey again said that [REDACTED] went down to one knee when he pulled away from him as he was trying to put handcuffs. He said he did not use force but pulled him causing [REDACTED] to go down to one knee. Bailey said he told OPR that he did not throw [REDACTED] down to the ground only that he pulled his arm causing [REDACTED] to go down on one knee. He was then able to put the other handcuff. Bailey said he read the statement he made to OPR for its accuracy but did not ask [REDACTED] to change anything in the statement. He did not believe what he said to OPR was going to be used this way to charge him. Bailey said [REDACTED] was aggressive and combative toward him in the cell but willingly came over and turned around to be handcuffed. It was only when Bailey had one cuff on [REDACTED] that [REDACTED] resisted. Bailey said he was not required to fill out an incident report or use of force report if nothing happened in the hallway, however, he still filled out an incident report regarding what happened in the cell. In the incident report, Sheriff's Exhibit 3, Bailey put, "R/O escorted [REDACTED] to his cell. [REDACTED] began packing then charged R/O saying 'ain't no cameras in here Bitch.' R/O took Inmate [REDACTED] to the ground and handcuffed him and escorted him off the deck." Bailey explained that this was a summary and not everything that happened. Bailey said he did not mention in his incident report that an inmate told [REDACTED] to spit on Bailey. Bailey also did not mention in his summary that [REDACTED] spit on the ground or that [REDACTED] said he was going to spit on Bailey.

Joint Exhibit 13 was shown to Bailey. Bailey said he recognized it as his use of force report for the incident that happened in the hallway. Bailey put in his report that [REDACTED] took "slightly evasive movement of arm" but could not remember since it happened in 2012. When Bailey marked "flailing", he meant that [REDACTED] was moving his head right to left as [REDACTED] was trying to spit at Bailey. Bailey in his report wrote that when [REDACTED] attempted to spit at him, he grabbed [REDACTED] and threw him to the ground. He did not write in his report that he struck [REDACTED] by the head causing [REDACTED] to hit a wall. Bailey explained that he did not have to put what he did but only the reason why he used force. However, Bailey did state in his use of force report that he grabbed [REDACTED] by the head and threw him on the ground. Bailey said that the video did not show him throwing [REDACTED] to the ground. His use of force report did not state that [REDACTED] threatened to spit at Bailey or that [REDACTED] did spit on the ground. Sheriff's Exhibit 3, the incident report filled out by Bailey did not state that he placed his hand on [REDACTED] causing [REDACTED] to hit his head on the wall. Bailey believed that being spit on by a detainee was a battery but he did not file a battery charge against [REDACTED]. Bailey agreed that if [REDACTED] did not attempt to spit at him, he was not allowed to use force on [REDACTED]. Bailey said just before 9:59:44 on the video when he pushed [REDACTED] head, [REDACTED] attempted to spit at him. Joint Exhibit 12 was the Inmate Disciplinary Report filled out by Bailey on [REDACTED]. Bailey wrote that [REDACTED] infraction was that he attempted to spit at Bailey. Bailey did not write in the report that he put his hand on [REDACTED] causing [REDACTED] to hit his head on a wall. Bailey said he was only required to write the inmate's infraction. Bailey did not write that he grabbed [REDACTED] and pushed him to the ground either.

On redirect examination by Bailey's attorney, Bailey testified that in the Joint Exhibit 13, the use of force report, a box for "Imminent threat of battery" was marked. Bailey said the threat of battery was for attempted spit on him. Bailey explained that the incident report was partly filled out by him and his supervisor. Bailey marked the incident type as "Battery to staff." Bailey's Exhibit 2 was a watch commander's preliminary finding. Bailey said he reported to Lt. [REDACTED] and OPR that he had struck or pushed [REDACTED] into the wall causing [REDACTED] to strike his head. Bailey said he did not file a battery complaint against [REDACTED] because he had never filed one against any inmates even when he was hit by them.

On redirect examination by [REDACTED] attorney, Bailey testified that when he was in the cell with [REDACTED] he was focusing on [REDACTED] and not on [REDACTED] who was standing by the door. Bailey did not know what [REDACTED] was doing until [REDACTED] stepped into the cell.

On re-cross examination, Bailey testified that he never told Lt. [REDACTED] that he had to sidestep the spit from [REDACTED].

### **Findings/Conclusion of the Law:**

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence including all the exhibits that were admitted, the Board finds preponderance of the evidence that the Respondent, Officer Bailey did violate Sheriff's Order 11.2.1.0 when he used excessive force by striking [REDACTED] in the head from behind in the hallway as [REDACTED] was in handcuffs. At the time Respondent struck [REDACTED] from behind, [REDACTED] was not spitting, attempted to spit, or turned his head towards Respondent. In fact, it is clear from the video that [REDACTED] was walking in front of the Respondent in handcuffs looking straight ahead before being struck from behind by Respondent causing him to hit a wall. In the hallway, [REDACTED] was under control, not resisting and in handcuffs. The excessive use of force caused [REDACTED] to sustain lacerations to his right forehead. Respondent further violated the General Order 24.9.1.0 when he failed to follow the procedures for reporting and documenting the incident of excessive use of force on [REDACTED] when he failed to complete the use of force report and inmate disciplinary report by failing to include that he struck [REDACTED] from behind causing [REDACTED] head to hit a wall while [REDACTED] was handcuffed and walking in front of Respondent.

The Board finds that Respondent violated General Order 4.1, General Order 3.8, and Sheriff's Order 11.2.20.0 when he failed to conduct himself in a professional and ethical manner by being untruthful to his supervisor and to OPR. The Board further finds that Respondent's testimony was inconsistent with his reports and his interview with OPR. Finally, Respondent violated Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B when he failed to follow General Orders and Sheriff's Orders.

### **Order:**

Wherefore, based on the foregoing, it is hereby ordered that the Respondent is removed from the Cook County Sheriff's Office effective March 13, 2015.

John D. Bailey #1811



**JAMES P. NALLY, Chairman**



**BYRON BRAZIER, Vice-Chairman**



**JOHN A. CALICANDRO, Secretary**



**BRIAN RIORDAN, Board Member**



**KIM R. WIDUP, Board Member**



**VINCENT T. WINTERS, Board Member**



**JENNIFER R. BAE, Board Member**



**PATRICK BRADY, Board Member**

Dated: October 13, 2015